

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**ROSA ZERTUCHE,**

**Plaintiff,**

**v.**

**ALLSTATE INSURANCE COMPANY  
AND ANNE OKLESEN,**

**Defendants.**

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**CIVIL ACTION NO. \_\_\_\_\_**

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**DEFENDANT ALLSTATE INSURANCE COMPANY AND ANNE OKLESEN'S  
NOTICE OF REMOVAL**

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TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants Allstate Insurance Company and Anne Oklesen in Cause No. 2016CI17805, pending in the 288th Judicial District Court of Bexar County, Texas, file this Notice of Removal from that court to the United States District Court for the Western District of Texas, San Antonio Division, on the basis of diversity of citizenship and amount in controversy and respectfully show:

**I.  
FACTUAL BACKGROUND**

1.1 On or about October 11, 2016, Plaintiff filed Plaintiff's Original Petition in the matter styled *Rosa Zertuche v. Allstate Insurance Company and Anne Oklesen*, Cause No. 2016CI17805, pending in the 288th Judicial District Court of Bexar County, Texas, in which Plaintiff made a claim for damages to her home under a homeowner's insurance policy with Allstate Fire and Casualty Insurance Company.

1.2 Plaintiff served Defendant Allstate Insurance Company (“Allstate”) with Plaintiff’s Original Petition and process on October 20, 2016, by process server on its registered agent, CT Corporation System.

1.3 Plaintiff served Defendant Anne Oklesen (“Oklesen”) with Plaintiff’s Original Petition and process on October 24, 2016, at her place of business located at 3100 Sanders Road, N4A, Northbrook, Illinois 60062 by process server.

1.4 Simultaneously with the filing of this notice of removal, attached hereto as Exhibit “A” is the Index of State Court Documents that clearly identifies each document and indicates the date the document was filed in state court. Attached as Exhibit “B” is a copy of the docket listing and all documents filed in the state court action are attached as Exhibits “B-1” through Exhibit “B-5” as identified on the Index of State Court Documents.

## **II.**

### **BASIS FOR REMOVAL**

2.1 Defendants file this notice of removal within 30 days of receiving Plaintiff’s Original Petition. *See* 28 U.S.C. §1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *See id.*

2.2 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

#### **A. THE PROPER PARTIES ARE OF DIVERSE CITIZENSHIP**

2.3 Plaintiff is, and was at the time the lawsuit was filed, a natural person and a resident of Bexar County in the State of Texas and thus, is a citizen of Texas. *See* Plaintiff’s Original Petition, ¶ 2. On information and belief, Plaintiff intends to continue residing in Texas and is thus domiciled in Texas. *See Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571

(5th Cir. 2011) (evidence of a person's place of residence is prima facie proof of his state of domicile, which presumptively continues unless rebutted with sufficient evidence of change).

2.4 Defendant Allstate Insurance Company is an Illinois corporation with its principal place of business in Illinois and is a citizen of the State of Illinois for diversity purposes, and therefore, complete diversity exists.

2.5 The party that issued the Plaintiff's homeowners policy in this case, and who is the only proper Defendant, is Allstate Fire and Casualty Insurance Company. *See* Exhibit "C." Allstate Fire and Casualty Insurance Company is an Illinois corporation with its principal place of business in Illinois and is a citizen of the State of Illinois for diversity purposes, and therefore, complete diversity exists.

2.6 Upon information and belief, Defendant Oklesen is, and was at the time the lawsuit was filed, a citizen of the State of Illinois. *See* Plaintiff's Original Petition, ¶ 4.

**B. THE AMOUNT IN CONTROVERSY EXCEEDS THE JURISDICTIONAL REQUIREMENTS FOR SUBJECT MATTER JURISDICTION.**

2.7 In determining the amount in controversy, the court may consider "policy limits... penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at \* 2-3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff's case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int'l Co.*, 75 F. Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exch.*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in

controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

2.8 This is a civil action in which the amount in controversy exceeds \$75,000.00. Plaintiff alleges that Defendants are liable under a residential insurance policy because Plaintiff made a claim under that policy and Defendants wrongfully adjusted and denied Plaintiff's claim.

2.9 Plaintiff has specifically pled that she is seeking monetary relief over \$200,000, but not more than \$1,000,000. *See* Plaintiff's Original Petition, ¶ 5. This evidence clearly demonstrates that the amount in controversy in this case exceeds the jurisdictional requirements.

### **III.** **THE REMOVAL IS PROCEDURALLY CORRECT**

3.1 Defendant Allstate was first served with Plaintiff's Original Petition and process on October 20, 2016. Further, Defendant Oklesen was served with Plaintiff's Original Petition and process on October 24, 2016. This notice of removal is filed within the 30-day time period required by 28 U.S.C. § 1446(b).

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

3.3 Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

3.4 Pursuant to 28 U.S.C. §1446(d), promptly after Defendants file this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

3.5 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Bexar County District Court, promptly after Defendants file this Notice.

**IV.**  
**CONCLUSION**

4.1 Based upon the foregoing, the exhibits submitted in support of this Removal and other documents filed contemporaneously with this Notice of Removal and fully incorporated herein by reference, Defendants Allstate Insurance Company and Anne Oklesen hereby remove this case to this Court for trial and determination.

Respectfully submitted,

/s/ Vanessa A. Rosa

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ATTORNEYS FOR DEFENDANTS

ALLSTATE INSURANCE COMPANY AND ANNE

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**CERTIFICATE OF SERVICE**

This is to certify that on November 17, 2016, a copy of this document was served to all Counsel of Record via electronic notice and/or certified mail, return receipt requested to:

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/s/ Vanessa A. Rosa

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